

Senate Bill No. 744

Passed the Senate August 30, 2012

Secretary of the Senate

Passed the Assembly August 23, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 12531 of, and to add and repeal Chapter 17 (commencing with Section 13850) of Division 5 of, the Business and Professions Code, relating to water submeters.

LEGISLATIVE COUNSEL'S DIGEST

SB 744, Wyland. Water submeters: testing.

(1) Existing law requires that a person who uses, or intends to use, any weight or measure, or weighing or measuring instrument for commercial purposes, cause them to be sealed by a sealer before using the same, unless they have been sealed before sale, in which case existing law allows the purchaser to use them for the remainder of the period authorized by regulations adopted by the Secretary of Food and Agriculture. There is within the Department of Food and Agriculture the Division of Measurement Standards, whose activities are designed to ensure, among other things, the accuracy of commercial weighing and measuring devices.

This bill would provide that any water submeter tested by equipment that is regularly calibrated by tests that are directly traceable to standards promulgated by the National Institute of Standards and Technology shall be deemed to be sealed and approved for commercial use, as specified, provided that the submeter satisfies certain criteria, including that the submeter is otherwise a type approved by the Division of Measurement Standards.

(2) Existing law regulates the utilization and repair of weighing or measuring devices. Under existing law, for purposes of weighing and measuring devices, the term “placed in service” means to permit the use of a device that has been tested and found to be correct, as specified, and type approved, as provided, or to submit a device to a sealer for verification prior to installation. Under existing law, a device may only be placed in service by a sealer or a service agency.

This bill would provide that for the purposes of any applicable law or regulation relating to the placing of a water submeter in service, including, but not limited to, the above provisions, no water submeter shall be considered to have been put into service

prior to its installation if the water submeter is to be used in a multiunit residential structure. The bill would provide that any person installing or possessing a water submeter that complies with these provisions would not be guilty of a misdemeanor unless there is a knowing and willful intent to use an incorrect or inaccurate water submeter. The bill would authorize a county sealer to test a water submeter, as provided, and would require an incorrect water submeter to be replaced with a compliant one within a reasonable period of time if one is available. The bill would require manufacturers of submeters, or the licensed service agent responsible for the installation of water submeters, to notify the county sealer of the date water submeters are installed or otherwise placed in service and would provide that a failure to do so shall only be punishable by a civil penalty of not more than \$1,000, as provided. The bill would also make related conforming changes.

This bill would make the above provisions operative until January 1, 2016, and would state that the repeal of these provisions renders the provisions subject to review by the appropriate policy committees of the Legislature.

The people of the State of California do enact as follows:

SECTION 1. Section 12531 of the Business and Professions Code is amended to read:

12531. As used in this chapter, the following definitions are applicable:

(a) “Service agency” means any person, as defined in Section 12011, that for hire, award, commission, or any other payment of any kind, repairs a commercial device.

(b) “Service agent” means any person employed by a service agency to repair a commercial device.

(c) “Device” means any weighing or measuring equipment, contrivance, or instrument used, or designed to be used, for determining weight or measure, and includes any tool, appliance, or accessory used in connection therewith, that is used for commercial purposes as defined in subdivision (e) of Section 12500.

(d) “Placed in service” means, except as described in Section 13855, to permit the use of a device that has been tested and found to be correct, as defined in subdivision (c) of Section 12500, and

type approved, as provided for in Section 12500.5, or to submit a device to a sealer for verification prior to installation.

(e) “Correct” means any device that meets all of the tolerance and specification requirements of Section 12107.

(f) “Repair,” in any of its variant forms, means to provide maintenance, or to install, adjust, recondition, or service a device.

SEC. 2. Chapter 17 (commencing with Section 13850) is added to Division 5 of the Business and Professions Code, to read:

CHAPTER 17. WATER SUBMETERS

13850. (a) Any water submeter tested by equipment that is regularly calibrated by tests that are directly traceable to standards promulgated by the National Institute of Standards and Technology shall be deemed to be tested and sealed and approved for commercial use pursuant to any regulations related to the testing and oversight of submeters by the Division of Measurement Standards, including, but not limited to, Sections 12501.1 and 12502, provided that all the following conditions are met:

(1) The submeter complies with the accuracy tolerance for submeters as published in the National Institute of Standards and Technology Handbook 44.

(2) The submeter is otherwise a type approved by the Division of Measurement Standards.

(3) The identity of the entity that performed the test and the test results are attached to the submeter.

(b) Nothing in this section shall be construed to limit or alter any additional regulations relating to testing and oversight of water submeters by the Division of Measurement Standards that are consistent with this section. A public entity, as defined in Section 811.2 of the Government Code, may adopt and enforce an ordinance, rule, regulation, or policy that is in furtherance of, and consistent with, this section.

13855. (a) For purposes of any applicable law or regulation relating to the placing of a water submeter in service, including, but not limited to, subdivision (d) of Section 12531 and Section 4085 of Title 4 of the California Code of Regulations, no water submeter shall be considered to have been put into service prior to its installation if the water submeter is to be used in a multiunit residential structure.

(b) For purposes of this division, any person installing or possessing a water submeter that complies with the requirements of this division shall not be guilty of a misdemeanor unless there is a knowing and willful intent to use a water submeter that is incorrect or inaccurate as defined in subdivision (d) of Section 12500.

(c) A county sealer may test a water submeter at the request of the owner of a water submeter, to investigate a request made pursuant to Section 12503, or periodically at the discretion of the sealer. If a county sealer determines that the water submeter may be incorrect the owner of the water submeter shall do both of the following:

(1) Replace the water submeter with one that complies with the provisions of subdivision (a) of Section 13850 within a reasonable period of time if one is available.

(2) Notify the tenant in writing, within a reasonable period of time, not to exceed 21 days, of the date that the water submeter was removed and replaced.

(d) An owner of a water submeter that has complied with subdivision (c) shall not be liable for any penalty or fines pursuant to this division.

13856. (a) Manufacturers of water submeters, or the licensed service agent responsible for the installation of water submeters, shall notify the county sealer of the date water submeters are installed or otherwise placed in service.

(b) A violation of this section shall only be punishable pursuant to the civil penalty provisions of Section 12015.3.

13859. (a) This chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

(b) Notwithstanding any other provision of law, the repeal of this chapter renders the chapter subject to review by the appropriate policy committees of the Legislature.

Approved _____, 2012

Governor